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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214578
Party	Defendant LeMar Xavier Lewis
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Date	07/08/2015
Attachments	Motion to dismiss.pdf(2019572 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

LeMans Corporation, : Opposer, .

• Opposition No. 91214578

Mark : "THORO"

LeMar Xavier Lewis, Applicant. :

Motion To Dismiss "Pre-Existing Registered Trademark/ Trademark Bullying"

I, LeMar Xavier Lewis (Applicant for standard THORO mark 85956925) would like to formally and respectfully request from the U.S.P.T.O Board a dismissal of this proceeding number "91214578" for the standard word mark "THORO". I (The Applicant) sincerely and in good faith feel that the "Opposer" LeMans Corporation seeks to use its considerable financial, and legal resources to harass and intimidate my much smaller (but growing) entity into surrendering my application. It is my firm belief Lemans Corp. has no reasonable claims to "THORO" (Opposer's brand/mark is called Thor). I have had a registered THORO mark in stylized format for over 8 years (Thoro stylized 3206498). Opposer/ Lemans Corporation in my opinion are attempting to "policing" their mark beyond a reasonable measure and respective rights. My emerging business lacks the financial resources and specialized knowledge to formulate a sufficient defense against these in what most would call "frivolous" and "Over" reaching claims?

I understand it's the responsibility of all trademark holders to monitor and defend their marks rights. In this case I feel strongly that Lemans is a eclipsing and abusing those rights by applying "trademark bullying" tactics as an attempt to put smaller entities such as mine out of business. Before withdrawing for financing reasons, my counsel informed me that Lemans Corp has a history of applying these methods to slow or stop other mark applicants. How can new ideas and innovation flourish in such an imbalanced environment? In good faith and with complete understanding, I am respectfully requesting a "Motion to Dismiss". The reasoning behind this request areas follows.

1. LeMar Xavier Lewis (Applicant) owns Pre-Existing THORO Stylized Mark Registration" 3206498"

I LeMar Xavier Lewis am the owner of a pre-existing, stylized THORO mark' 3206498 "and have been using, marketing and offering for sale on a modest level for over 8 years. I applied for the current mark that's being opposed in order to further protect my registered stylized THORO mark (3206498) against potential infringers. I'm not sure if this terminology is applicable in this case but I'd like to reference the "Morehouse Defense". To the best of my knowledge of this defense it states that the owner of a preexisting mark is in most cases allowed to register a second mark that is essentially the same.

2. Opposer/ Lemans Corp appears to be a Niche brand that is focused on Motocross Protective Sports Equipment.

LeMans Corp. ("Opposer" owner of THOR mark) is a "niche" brand, whose primary products are protective equipment and gear for motorsport participants. The word "THOR" is typically associated with Marvel Comics (outside of motorsports arena), or a super hero NOT CLOTHING and APPAREL. Clothing is appears as a SECONDARY revenue stream for the "Opposer" Lemans Corp. My respective mark application THORO's PRIMARY list of goods is premium sportswear and apparel. I feel that the "Opposer" is trying to "expedite" us out of clothing because we were their first, but have chosen not to acknowledge our presence. If Thor blocks our registration it would be cutting off all channels and goods sportswear could offer us and the open market. We feel that's a lot of power and coverage for a niche brand such as the "Opposer's"/ Lemans Corp.

3. The Opposer/ Lemans corp. is abusing and far overreaching in requesting Discovery on 2 separate marks. One of which is already registered and has been for 8 years.

Lemans Corp. (Opposer) is requesting excessive and burdensome amounts of information and documentation from over 14 years ago. What's even more perplexing is that they are requesting information regarding a mark that isn't even being opposed in this proceeding. (My stylized mark is the one that's been registered for almost a decade). When I neglect to provide information about my registered mark stylized mark the "Opposer" (Lemans Corp.) "Compels" to the board as if I'm not being compliant, which isn't the case. I feel that the "opposed" THORO standard mark should be the primary focus during this proceeding, not the stylized mark. If the USPTO board desires for me to submit information about both marks then please direct me and I will do my best to do so.

4. By granting the registration of my THORO standard mark, I could protect myself more effectively against other would be infringers.

From my understanding a trademark holders needs both marks to defend themselves, and bring sound complaints against potential infringers. Only owning the design mark and not the standard mark puts me at a severe disadvantage to potential counterfeiters of the THORO brand. I think in this matter it's just a coincidence regarding the spelling.

5. Merits of 'Opposers' claims.

The "Opposers"/ Lemans Corp claims are baseless, far and wide reaching. First I'd like you to consider that Thor and THORO are spelled different, they have different meanings, and are in markets that don't fee conflict. Essentially, what I'd like to communicate is that both parties have co-existed this for this long, why can't we continue to both build our brands and create opportunities and jobs for people in a country where innovation and enterprise is encouraged and not subdued and restricted.

Applicants mark THORO is a positive brand that aspires to provide jobs and create opportunities for young people in this country. This proceeding has cost me upwards of \$4,000, time away from family and work. I do not have the personal resources to hire new counsel to competently defend myself in this matter. I respectfully ask and compel the board to address this underlying concern of mine. I feel no reason why both parties can't co-exist in the open market. I hereby request a motion to dismiss for reasoning of my pre-existing stylized THORO trademark, and the attempting to bully my application into surrender on far reaching and I feel meritless claims. Thank you for your time, and I look forward to your response.

Respectfully,

LeMar Xavier Lewis 33 W. Trade
Street Suite 2100
Charlotte N.C 28202

CERTIFICATE OF SERVICE

I hereby certify that a "motion to dismiss" was served via email on this 8th day of July, 2015
upon the following:

LeMans Corporation/ Tara. Vold
J.P I Williamson
VOLD & WILLIAMSON PLLC
8251 Greensboro Drive, Suite 340
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571-395-4630

Lemar Xavier Lewis 7-8-2015

Lemar Xavier Lewis

Date